

AMENDED IN SENATE JUNE 20, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3098**

**Introduced by Assembly Member Campbell**

February 23, 1996

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An act to amend Sections 1000.5, 1001.9, 1001.33, 1001.55, 1001.75, 13203, and 13300 *of the Penal Code*, relating to diversion.

LEGISLATIVE COUNSEL'S DIGEST

AB 3098, as amended, Campbell. Diversion.

Existing law provides procedures for the diversion of specified controlled substance offenses, specified offenses filed as misdemeanors, specified offenses of a parent or legal guardian with respect to his or her minor child, and offenses committed by developmentally disabled persons. These procedures provide that upon the successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The procedures also provide that the divertee may indicate in response to any question concerning his or her prior record that he or she was not arrested or diverted for the offense. Existing law also requires that the divertee be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request made within 5 years of the arrest, and that completion of the diversion program does not relieve him or

her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer made within 5 years of the arrest.

This bill would repeal this 5-year limit *for offenses which did not result in conviction but for which a postarrest diversion program was completed.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1000.5 of the Penal Code is  
2 amended to read:

3 1000.5. (a) Any record filed with the Department of  
4 Justice shall indicate the disposition in those cases  
5 diverted pursuant to this chapter. Upon successful  
6 completion of a diversion program, the arrest upon which  
7 the diversion was based shall be deemed to have never  
8 occurred. The divertee may indicate in response to any  
9 question concerning his or her prior criminal record that  
10 he or she was not arrested or diverted for the offense,  
11 except as specified in subdivision (b). A record pertaining  
12 to an arrest resulting in successful completion of a  
13 diversion program shall not, without the divertee's  
14 consent, be used in any way that could result in the denial  
15 of any employment, benefit, license, or certificate.

16 (b) The divertee shall be advised that, regardless of his  
17 or her successful completion of diversion, the arrest upon  
18 which the diversion was based may be disclosed by the  
19 Department of Justice in response to any peace officer  
20 application request and that, notwithstanding subdivision  
21 (a), this section does not relieve him or her of the  
22 obligation to disclose the arrest in response to any direct  
23 question contained in any questionnaire or application  
24 for a position as a peace officer, as defined in Section 830.

25 SEC. 2. Section 1001.9 of the Penal Code is amended  
26 to read:

27 1001.9. (a) Any record filed with the Department of  
28 Justice shall indicate the disposition in those cases



1 diverted pursuant to this chapter. Upon successful  
2 completion of a diversion program, the arrest upon which  
3 the diversion was based shall be deemed to have never  
4 occurred. The divertee may indicate in response to any  
5 question concerning his or her prior criminal record that  
6 he or she was not arrested or diverted for the offense,  
7 except as specified in subdivision (b). A record pertaining  
8 to an arrest resulting in successful completion of a  
9 diversion program shall not, without the divertee's  
10 consent, be used in any way that could result in the denial  
11 of any employment, benefit, license, or certificate.

12 (b) The divertee shall be advised that, regardless of his  
13 or her successful completion of diversion, the arrest upon  
14 which the diversion was based may be disclosed by the  
15 Department of Justice in response to any peace officer  
16 application request and that, notwithstanding subdivision  
17 (a), this section does not relieve him or her of the  
18 obligation to disclose the arrest in response to any direct  
19 question contained in any questionnaire or application  
20 for a position as a peace officer, as defined in Section 830.

21 SEC. 3. Section 1001.33 of the Penal Code is amended  
22 to read:

23 1001.33. (a) Any record filed with the Department of  
24 Justice shall indicate the disposition in those cases  
25 diverted pursuant to this chapter. Upon successful  
26 completion of a diversion program, the arrest upon which  
27 the diversion was based shall be deemed to have never  
28 occurred. The divertee may indicate in response to any  
29 question concerning his or her prior criminal record that  
30 he or she was not arrested or diverted for the offense,  
31 except as specified in subdivision (b). A record pertaining  
32 to an arrest resulting in successful completion of a  
33 diversion program shall not, without the divertee's  
34 consent, be used in any way that could result in the denial  
35 of any employment, benefit, license, or certificate.

36 (b) The divertee shall be advised that, regardless of his  
37 or her successful completion of diversion, the arrest upon  
38 which the diversion was based may be disclosed by the  
39 Department of Justice in response to any peace officer  
40 application request and that, notwithstanding subdivision

(a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

SEC. 4. Section 1001.55 of the Penal Code is amended to read:

1001.55. (a) Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request and that, notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

SEC. 5. Section 1001.75 of the Penal Code is amended to read:

1001.75. (a) Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for that offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a

1 diversion program shall not, without the divertee's  
2 consent, be used in any way that would result in the denial  
3 of any employment, benefit, license, or certificate.

4 (b) The divertee shall be advised that, regardless of his  
5 or her successful completion of diversion, the arrest upon  
6 which the diversion was based may be disclosed by the  
7 Department of Justice in response to any peace officer  
8 application request and that, notwithstanding subdivision  
9 (a), this section does not relieve him or her of the  
10 obligation to disclose the arrest in response to any direct  
11 question contained in any questionnaire or application  
12 for a position as a peace officer, as defined in Section 830.

13 SEC. 6. Section 13203 of the Penal Code is amended  
14 to read:

15 13203. (a) Any criminal justice agency may release,  
16 *within five years of the arrest*, information concerning an  
17 arrest or detention of a peace officer or applicant for a  
18 position as a peace officer, as defined in Section 830,  
19 which did not result in conviction, *and for which the*  
20 *person did not complete a postarrest diversion program,*  
21 *to a government agency employer of that peace officer*  
22 *or applicant.*

23 (b) Any criminal justice agency may release  
24 information concerning an arrest of a peace officer or  
25 applicant for a position as a peace officer, as defined in  
26 Section 830, which did not result in conviction but for  
27 which the person completed a postarrest diversion  
28 program, or information concerning a referral to, and  
29 participation in, any postarrest diversion program to a  
30 government agency employer of that peace officer or  
31 applicant for a position as a peace officer, as defined in  
32 Section 830.

33 ~~(b) Notwithstanding subdivision (a), a criminal justice~~  
34 ~~applicant.~~

35 (c) *Notwithstanding subdivision (a) or (b), a criminal*  
36 *justice agency shall not release information under the*  
37 *following circumstances:*

38 (1) Information concerning an arrest for which  
39 diversion has been ordered without attempting to

1 determine whether diversion has been successfully  
2 completed.

3 (2) Information concerning an arrest or detention  
4 followed by a dismissal or release without attempting to  
5 determine whether the individual was exonerated.

6 (3) Information concerning an arrest without a  
7 disposition without attempting to determine whether  
8 diversion has been successfully completed or the  
9 individual was exonerated.

10 SEC. 7. Section 13300 of the Penal Code is amended  
11 to read:

12 13300. (a) As used in this section:

13 (1) “Local summary criminal history information”  
14 means the master record of information compiled by any  
15 local criminal justice agency pursuant to Chapter 2  
16 (commencing with Section 13100) of Title 3 of Part 4  
17 pertaining to the identification and criminal history of  
18 any person, such as name, date of birth, physical  
19 description, dates of arrests, arresting agencies and  
20 booking numbers, charges, dispositions, and similar data  
21 about the person.

22 (2) “Local summary criminal history information”  
23 does not refer to records and data compiled by criminal  
24 justice agencies other than that local agency, nor does it  
25 refer to records of complaints to or investigations  
26 conducted by, or records of intelligence information or  
27 security procedures of, the local agency.

28 (3) “Local agency” means a local criminal justice  
29 agency.

30 (b) A local agency shall furnish local summary  
31 criminal history information to any of the following, when  
32 needed in the course of their duties, provided that when  
33 information is furnished to assist an agency, officer, or  
34 official of state or local government, a public utility, or any  
35 entity, in fulfilling employment, certification, or licensing  
36 duties, Chapter 1321 of the Statutes of 1974 and Section  
37 432.7 of the Labor Code shall apply:

38 (1) The courts of the state.

39 (2) Peace officers of the state, as defined in Section  
40 830.1, subdivisions (a) and (b) of Section 830.2,

1 subdivisions (a), (b), and (j) of Section 830.3, subdivisions  
2 (a), (b), and (c) of Section 830.5, and subdivision (e) of  
3 Section 830.2.

4 (3) District attorneys of the state.

5 (4) Prosecuting city attorneys of any city within the  
6 state.

7 (5) Probation officers of the state.

8 (6) Parole officers of the state.

9 (7) A public defender or attorney of record when  
10 representing a person in proceedings upon a petition for  
11 a certificate of rehabilitation and pardon pursuant to  
12 Section 4852.08.

13 (8) A public defender or attorney of record when  
14 representing a person in a criminal case and when  
15 authorized access by statutory or decisional law.

16 (9) Any agency, officer, or official of the state when the  
17 local summary criminal history information is required to  
18 implement a statute, regulation, or ordinance that  
19 expressly refers to specific criminal conduct applicable to  
20 the subject person of the local summary criminal history  
21 information, and contains requirements or exclusions, or  
22 both, expressly based upon the specified criminal  
23 conduct.

24 (10) Any city, county, city and county, or district, or  
25 any officer or official thereof, when access is needed in  
26 order to assist the agency, officer, or official in fulfilling  
27 employment, certification, or licensing duties, and when  
28 the access is specifically authorized by the city council,  
29 board of supervisors, or governing board of the city,  
30 county, or district when the local summary criminal  
31 history information is required to implement a statute,  
32 regulation, or ordinance that expressly refers to specific  
33 criminal conduct applicable to the subject person of the  
34 local summary criminal history information, and contains  
35 requirements or exclusions, or both, expressly based upon  
36 the specified criminal conduct.

37 (11) The subject of the local summary criminal history  
38 information.

39 (12) Any person or entity when access is expressly  
40 authorized by statute when the local summary criminal

1 history information is required to implement a statute,  
2 regulation, or ordinance that expressly refers to specific  
3 criminal conduct applicable to the subject person of the  
4 local summary criminal history information, and contains  
5 requirements or exclusions, or both, expressly based upon  
6 the specified criminal conduct.

7 (13) Any managing or supervising correctional officer  
8 of a county jail or other county correctional facility.

9 (c) The local agency may furnish local summary  
10 criminal history information, upon a showing of a  
11 compelling need, to any of the following, provided that  
12 when information is furnished to assist an agency, officer,  
13 or official of state or local government, a public utility, or  
14 any entity, in fulfilling employment, certification, or  
15 licensing duties, Chapter 1321 of the Statutes of 1974 and  
16 Section 432.7 of the Labor Code shall apply:

17 (1) Any public utility, as defined in Section 216 of the  
18 Public Utilities Code, which operates a nuclear energy  
19 facility when access is needed to assist in employing  
20 persons to work at the facility, provided that, if the local  
21 agency supplies the information, it shall furnish a copy of  
22 this information to the person to whom the information  
23 relates.

24 (2) To a peace officer of the state other than those  
25 included in subdivision (b).

26 (3) To a peace officer of another country.

27 (4) To public officers, other than peace officers, of the  
28 United States, other states, or possessions or territories of  
29 the United States, provided that access to records similar  
30 to local summary criminal history information is expressly  
31 authorized by a statute of the United States, other states,  
32 or possessions or territories of the United States when this  
33 information is needed for the performance of their  
34 official duties.

35 (5) To any person when disclosure is requested by a  
36 probation, parole, or peace officer with the consent of the  
37 subject of the local summary criminal history information  
38 and for purposes of furthering the rehabilitation of the  
39 subject.

1 (6) The courts of the United States, other states, or  
2 territories or possessions of the United States.

3 (7) Peace officers of the United States, other states, or  
4 territories or possessions of the United States.

5 (8) To any individual who is the subject of the record  
6 requested when needed in conjunction with an  
7 application to enter the United States or any foreign  
8 nation.

9 (9) Any public utility, as defined in Section 216 of the  
10 Public Utilities Code, when access is needed to assist in  
11 employing persons who will be seeking entrance to  
12 private residences in the course of their employment.  
13 The information provided shall be limited to the record  
14 of convictions and any arrest for which the person is  
15 released on bail or on his or her own recognizance  
16 pending trial.

17 If the local agency supplies the information pursuant to  
18 this paragraph, it shall furnish a copy of the information  
19 to the person to whom the information relates.

20 Any information obtained from the local summary  
21 criminal history is confidential and the receiving public  
22 utility shall not disclose its contents, other than for the  
23 purpose for which it was acquired. The local summary  
24 criminal history information in the possession of the  
25 public utility and all copies made from it shall be  
26 destroyed 30 days after employment is denied or granted,  
27 including any appeal periods, except for those cases  
28 where an employee or applicant is out on bail or on his or  
29 her own recognizance pending trial, in which case the  
30 state summary criminal history information and all copies  
31 shall be destroyed 30 days after the case is resolved,  
32 including any appeal periods.

33 A violation of any of the provisions of this paragraph is  
34 a misdemeanor, and shall give the employee or applicant  
35 who is injured by the violation a cause of action against  
36 the public utility to recover damages proximately caused  
37 by the violation.

38 Nothing in this section shall be construed as imposing  
39 any duty upon public utilities to request local summary

1 criminal history information on any current or  
2 prospective employee.

3 Seeking entrance to private residences in the course of  
4 employment shall be deemed a “compelling need” as  
5 required to be shown in this subdivision.

6 (10) Any city, county, city and county, or district, or  
7 any officer or official thereof, if a written request is made  
8 to a local law enforcement agency and the information is  
9 needed to assist in the screening of a prospective  
10 concessionaire, and any affiliate or associate thereof, as  
11 these terms are defined in subdivision (k) of Section 432.7  
12 of the Labor Code, for the purposes of consenting to, or  
13 approving of, the prospective concessionaire’s  
14 application for, or acquisition of, any beneficial interest in  
15 a concession, lease, or other property interest.

16 Any local government’s request for local summary  
17 criminal history information for purposes of screening a  
18 prospective concessionaire and their affiliates or  
19 associates before approving or denying an application for,  
20 or acquisition of, any beneficial interest in a concession,  
21 lease, or other property interest is deemed a “compelling  
22 need” as required by this subdivision. However, only local  
23 summary criminal history information pertaining to  
24 criminal convictions may be obtained pursuant to this  
25 paragraph.

26 Any information obtained from the local summary  
27 criminal history is confidential and the receiving local  
28 government shall not disclose its contents, other than for  
29 the purpose for which it was acquired. The local summary  
30 criminal history information in the possession of the local  
31 government and all copies made from it shall be  
32 destroyed not more than 30 days after the local  
33 government’s final decision to grant or deny consent to,  
34 or approval of, the prospective concessionaire’s  
35 application for, or acquisition of, a beneficial interest in a  
36 concession, lease, or other property interest. Nothing in  
37 this section shall be construed as imposing any duty upon  
38 a local government, or any officer or official thereof, to  
39 request local summary criminal history information on

1 any current or prospective concessionaire or their  
2 affiliates or associates.

3 (d) Whenever an authorized request for local  
4 summary criminal history information pertains to a  
5 person whose fingerprints are on file with the local  
6 agency and the local agency has no criminal history of  
7 that person, and the information is to be used for  
8 employment, licensing, or certification purposes, the  
9 fingerprint card accompanying the request for  
10 information, if any, may be stamped “no criminal record”  
11 and returned to the person or entity making the request.

12 (e) A local agency taking fingerprints of a person who  
13 is an applicant for licensing, employment, or certification  
14 may charge a fee not to exceed ten dollars (\$10) to cover  
15 the cost of taking the fingerprints and processing the  
16 required documents.

17 (f) Whenever local summary criminal history  
18 information furnished pursuant to this section is to be  
19 used for employment, licensing, or certification purposes,  
20 the local agency shall charge the person or entity making  
21 the request a fee which it determines to be sufficient to  
22 reimburse the local agency for the cost of furnishing the  
23 information, provided that no fee shall be charged to any  
24 public law enforcement agency for local summary  
25 criminal history information furnished to assist it in  
26 employing, licensing, or certifying a person who is  
27 applying for employment with the agency as a peace  
28 officer or criminal investigator. Any state agency  
29 required to pay a fee to the local agency for information  
30 received under this section may charge the applicant a  
31 fee sufficient to reimburse the agency for the expense.

32 (g) Whenever there is a conflict, the processing of  
33 criminal fingerprints shall take priority over the  
34 processing of applicant fingerprints.

35 (h) It is not a violation of this article to disseminate  
36 statistical or research information obtained from a record,  
37 provided that the identity of the subject of the record is  
38 not disclosed.

39 (i) It is not a violation of this article to include  
40 information obtained from a record in (1) a transcript or

1 record of a judicial or administrative proceeding or (2)  
2 any other public record when the inclusion of the  
3 information in the public record is authorized by a court,  
4 statute, or decisional law.

5 (j) Notwithstanding any other law, the Department of  
6 Justice or any state or local law enforcement agency may  
7 require the submission of fingerprints for the purpose of  
8 conducting summary criminal history information record  
9 checks which are authorized by law.

10 (k) Any local criminal justice agency may release,  
11 *within five years of the arrest*, information concerning an  
12 arrest or detention of a peace officer or applicant for a  
13 position as a peace officer, as defined in Section 830,  
14 which did not result in conviction, *and for which the*  
15 *person did not complete a postarrest diversion program,*  
16 *to a government agency employer of that peace officer*  
17 *or applicant.*

18 (l) Any local criminal justice agency may release  
19 information concerning an arrest of a peace officer or  
20 applicant for a position as a peace officer, as defined in  
21 Section 830, which did not result in conviction but for  
22 which the person completed a postarrest diversion  
23 program, or information concerning a referral to, and  
24 participation in, any postarrest diversion program to a  
25 government agency employer of that peace officer or  
26 applicant for a position as a peace officer, as defined in  
27 Section 830.

28 ~~(l) Notwithstanding subdivision (k), a local criminal~~  
29 ~~applicant.~~

30 (m) Notwithstanding subdivision (k) or (l), a local  
31 criminal justice agency shall not release information  
32 under the following circumstances:

33 (1) Information concerning an arrest for which  
34 diversion has been ordered without attempting to  
35 determine whether diversion has been successfully  
36 completed.

37 (2) Information concerning an arrest or detention  
38 followed by a dismissal or release without attempting to  
39 determine whether the individual was exonerated.

1 (3) Information concerning an arrest without a  
2 disposition without attempting to determine whether  
3 diversion has been successfully completed or the  
4 individual was exonerated.

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